THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO.23297 of 2006

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28th August 2007

Between:

1. S.Atchyutaram, S/o.Late Krishna Murthy, Hindu, 60 years, bus owner,r/o.Prakashnagar Colony, Srikakulam, Srikakulam District.

And 11 others.

...PETITIONERS

AND

1. The National Highways Authority of India, represented by its Chairman, Ministry of Road Transport Highway, G-5 & 6 Sector-10, Dwaraka, New Delhi-45.

And two others.

...RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO.23297 of 2006

ORDER:

The petitioners, twelve {12} in number, claim to be the owners of pucca stage carriage buses plying on the inter-state route, Parlakhimidi to Bandaruvanipeta via Pathapatnam, Narasannapeta and Srikakulam. It is stated that out of the total distance of seventy {70} kilometers, a distance of eight {8} kilometers is covered by National Highway No.5 from Madapam Toll Gate to Pathapatnam Road Junction via Narasannapeta. As per the Circular dated 05.08.2002 issued by the National Highways Authority of India, a concession in toll fee to the buses at the rate of Rs.25/- (Rupees twenty five only) per each entry was provided on production of proof of plying within twenty {20} kilometers.

The petitioners claim that pursuant to the said circular, the petitioners were paying a monthly toll fees of Rs.450/- (Rupees four hundred and fifty only) for plying their buses covering eight {8} kilometers on the National Highway by obtaining monthly passes.

While so, the third respondent started insisting on payment of Rs.3,750/- (Rupees three thousand seven hundred and fifty only) per month towards toll fees at the rate of Rs.125/- (Rupees one hundred and twenty five only) per day. Though the petitioners made representations dated 07.08.2006 and 17.08.2006 requesting to collect only Rs.25/- (Rupees twenty five only) per each single trip as per the circular dated 05.08.2002, the same was not considered on the ground that as per the subsequent circular dated 29.03.2005, they are entitled to collect higher amounts at the rate of Rs.125/- (Rupees one hundred and twenty five only) per day. Aggrieved by the said action, this Writ Petition is filed seeking a direction to the respondents to collect the toll fees at the rate of Rs.25/- (Rupees twenty five only) per each single trip or at Rs.750/-

(Rupees seven hundred and fifty only) per month.

A counter affidavit has been filed by the second respondent stating that the circular dated 05.08.2002 was superceded by the subsequent circular dated 29.03.2005. Basing on the circular dated 29.03.2005, a notification dated 15.07.2005 was issued and the respondents have been collecting the toll fees as per the consolidated instructions issued under the circular dated 29.03.2005 as well as the notification dated 15.07.2005. The allegation that excess amounts are being collected by the respondents is incorrect and as a matter of fact even the buses of Andhra Pradesh State Road Transport Corporation are paying the toll fees at the rate prescribed under the circular dated 29.03.2005.

Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

A perusal of the circular dated 29.03.2005 shows that in partial modification of the earlier Circular dated 05.08.2002, fresh instructions were issued for implementation with immediate effect in respect of

projects under Public Funded Projects. So far as the buses are concerned, it was directed as under.

> "Monthly passes for the State Transport buses may be given at the specified rate in favour of State Government Transport on the certification by the Competent Authority (not less than General Manager, State Government Road Transport) certifying the number of buses plying in the route per day. In case of Private local operators we may consider the same on production of their permit for the route operators and time-table of the route operation duly certified by the District Transport Authority".

Clause 5 of the circular provides for a concessional fees as under.

> "Concessional fee shall be charged from the Local Transport Operators on production of proof for plying within 20 Kms., i.e. goods challan for origin and destination clearly specifying the return details of the vehicle. The fee for such transport will be Rs.25/- for Trucks for each entry and Rs.15/- for Light Commercial Vehicles".

The notification dated 15.07.2005 also shows that National Highway No.5 was entrusted to the National Highways Authority of India and in exercise of the power under Section 7 of the National Highways Act, 1956, the Central Government notified collection of charges, for the use of the four lane stretch by the National Highways Authorities of India, at the rates specified there under. As per the said Schedule to the said

notification, so far as the buses are concerned, the rate prescribed is Rs.125/- (Rupees one hundred and twenty five only) for one way trip and Rs.190/- (Rupees one hundred and ninety only) for multiple trips in a day. However, when the same mechanical vehicle is to cross the stretch of National Highway more than once in a day, the user shall have the option to pay the fees for the multiple trips at the rates given in the schedule while crossing the gate in first trip itself **OR** if the vehicle has to use four lane stretch frequently in the entire month, the vehicle owner can have a monthly pass on payment of the charges equivalent to thirty single rates applicable to it as specified in the aforesaid schedule.

In terms of the above clause, the learned counsel for the respondents states, that the third respondent has been providing the concession by issuing monthly passes to the vehicles of the Andhra Pradesh State Road Transport Corporation on payment of Rs.3,750/- (Rupees three thousand seven hundred and fifty only) per month per bus (i.e. Rs.125/- X 30) .

In the light of the clear provisions of the circular dated 29.03.2005 read with the rates specified under the notification dated 15.07.2005, I do not find any substance in the contention of the petitioners that they are entitled to pay the toll fees at the rate of Rs.450/- (Rupees four hundred and fifty only) per month under the Circular which was superceded. Hence, the relief as prayed for cannot be granted.

However, the Writ Petition is disposed of granting liberty to the petitioners to make an application for issuing monthly passes on payment of Rs.3,750/- (Rupees three thousand seven hundred and fifty only) per month per vehicle. If any such request is made, the third respondent shall consider the same on par with the vehicles of the Andhra Pradesh State Road Transport Corporation. No costs.

(G.ROHINI, J)

28th August 2007
RRB